

Introduced by Senator DuttonFebruary 15, 2011

An act to amend Section 510 of, and to add Section 511.5 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 367, as introduced, Dutton. Employment: working hours.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by $\frac{2}{3}$ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek. Under existing law, any person who violates the provisions regulating work hours is guilty of a misdemeanor.

This bill would permit an individual nonexempt employee employed by an employer with 25 or less employees to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow the employer to implement this schedule without any obligation to pay overtime compensation. The bill would require the Division of Labor Standards Enforcement in the Department of Industrial Relations to enforce this provision and adopt regulations.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Small Business Workplace Flexibility Act of 2011.

1 SEC. 2. The Legislature finds and declares all of the following:

2 (a) Small businesses and their workers suffer from outdated and
3 inefficient workplace and overtime rules that do not allow for
4 sufficient flexibility for employers and workers to schedule their
5 hours of work for mutual benefit.

6 (b) California overtime laws, which are unique in the country,
7 make it difficult for most employers to reach an agreement with
8 an individual worker that would allow a flexible work schedule.

9 (c) Existing law does not permit a small business employer to
10 allow an individual worker to choose a flexible work schedule of
11 four 10-hour days per week without overtime being paid.

12 (d) As a consequence, small businesses do not have the
13 flexibility to offer their employees the opportunity to take
14 advantage of a flexible work schedule that would benefit the
15 workers and their families.

16 (e) Permitting employees employed by an employer with 25 or
17 fewer employees to elect to work four 10-hour days per week
18 without the payment of overtime would allow those employees to
19 spend much-needed time with their families, lessen traffic
20 congestion on our crowded roads and highways, allow workers to
21 spend one day a week on personal matters, such as volunteering
22 at a child's school, scheduling medical appointments, and attending
23 to other important family matters that often are difficult to schedule
24 with a five-day-per-week, eight-hour-per-day schedule.

25 (f) It is the intent of the Legislature in enacting the Small
26 Business Workplace Flexibility Act of 2011 to protect workers as
27 follows:

28 (1) An employee of an employer with 25 or fewer employees
29 may not be forced to work more than eight hours in a day without
30 receiving overtime, but, instead, he or she may request a flexible
31 work schedule of up to four 10-hour days per week and the
32 employer may agree to this schedule without having to pay
33 overtime for the ninth and tenth hours worked per day in that
34 schedule.

35 (2) The employer will be required to pay overtime rates after
36 10 work hours in a day for workers who have chosen a flexible
37 schedule pursuant to this act.

38 (3) The employer will be required to pay double normal pay
39 after 12 work hours in a day for a worker who has chosen a flexible
40 schedule under this act.

(4) The worker, including one who chooses a flexible schedule under this act, will receive overtime for any hours worked over 40 hours in a single week.

(g) Workplaces that are unionized already allow workers to choose to work four 10-hour days; however, it is virtually impossible for workers of nonunionized workplaces to enjoy this benefit.

SEC. 3. Section 510 of the Labor Code is amended to read:

510. (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) *An employee-selected flexible work schedule adopted pursuant to Section 511.5.*

~~(2)~~

(3) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

~~(3)~~

(4) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

SEC. 4. Section 511.5 is added to the Labor Code, to read:

511.5. (a) Notwithstanding Section 511 or any other law or order of the Industrial Welfare Commission, an individual nonexempt employee employed by an employer with 25 or fewer employees may work up to 10 hours per workday without any obligation on the part of the employer to pay an overtime rate of compensation, except as provided in subdivision (b), if the employee requests this schedule in writing and the employer approves the request. This shall be referred to as an overtime exemption for an employee-selected flexible work schedule.

(b) If an employee-selected flexible work schedule is adopted pursuant to subdivision (a), the employer shall pay overtime at one and one-half times the employee's regular rate of pay for all hours worked over 40 hours in a workweek or over 10 hours in a workday, whichever is the greater number of hours. All work performed in excess of 12 hours per workday and in excess of eight hours on a fifth, sixth, or seventh day in the workweek shall be paid at double the employee's regular rate of pay.

(c) The employer may inform its employees that it is willing to consider an employee request to work an employee-selected flexible work schedule, but shall not induce a request by promising an employment benefit or threatening an employment detriment.

(d) The employee or employer may discontinue the employee-selected flexible work schedule at any time by giving written notice to the other party. The request will be effective the first day of the next pay period or the fifth day after notice is given if there are fewer than five days before the start of the next pay period, unless otherwise agreed to by the employer and the employee.

(e) This section does not apply to any employee covered by a valid collective bargaining agreement or employed by the state, a city, county, city and county, district, municipality, or other public, quasi-public, or municipal corporation, or any political subdivision of this state.

(f) This section shall be liberally construed to accomplish its purposes.

1 (g) (1) The Division of Labor Standards Enforcement shall
2 enforce this section and shall adopt or revise regulations in a
3 manner necessary to conform and implement this section.

4 (2) This section shall prevail over any inconsistent provisions
5 in any wage order of the Industrial Welfare Commission.

6 SEC. 5. The provisions of this act are severable. If any
7 provision of this act or its application is held invalid, that invalidity
8 shall not affect other provisions or applications that can be given
9 effect without the invalid provision or application.